U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29126888

Date: JAN. 23, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, describing himself as a food service entrepreneur, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded the Petitioner qualified as an advanced degree professional, but further determined that he did not demonstrate his eligibility for a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner, a native and citizen of Brazil, stated in support of the petition that he worked as a chief executive officer and owner in "critical and leading capacities" for over 23 years. The Petitioner asserted that through his entrepreneurial ventures in the food industry in the United States, he would have "ripple effects generated upon significant commercial matters, the domestic job market, the national economy, and the overall business ecosystem." The Petitioner indicating that his proposed endeavor would "bring to the U.S. economy…improved productivity, spurring innovation, and creating jobs [*sic*]," as well as "enhance strategic, operational, marketing, and sales management capabilities." The Petitioner emphasized the impact that immigrant entrepreneurs have on the U.S. economy, indicating that they create an average of 1,200 jobs per new company. The Petitioner stated he would expand and develop a company in the United States, L-C- Corp., "focused on offering food establishments with a focus on natural and healthy foods" and a menu offering "coffees, fresh natural, and healthy food, with a peculiar Brazilian touch of good service." The Petitioner asserted that the business would generate over $3 million in revenue and hire a total of 270 people during the first five years. He also contended that the company would offer "unique products and services," "reduce dependence on obsolete systems and technologies, resulting in greater economic freedom," and "apply the latest technologies." The Petitioner indicated that the new company would open locations in Hub Zones, further benefiting U.S. economic development.

In addition, the Petitioner submitted an expert opinion letter from [redacted], a professor of business management at the [redacted] stated that the food services industry has substantial economic impact in the United States and asserted that, given the Petitioner's knowledge of the Brazilian business and food services sector, he could expand his company into Brazil and other international markets, helping U.S. food services companies. [redacted] further pointed to the Petitioner's "impressive record of business achievements in the food services industry in Brazil" and his "intimate knowledge of the Brazilian business and legal environment."

The Director later issued a request for evidence (RFE) concluding the Petitioner had established that his proposed endeavor had substantial merit. However, the Director indicated the Petitioner did not demonstrate that his proposed endeavor would have national importance. The Director stated the Petitioner did not provide sufficient detail and supporting evidence to establish that the endeavor would offer substantial economic benefits in its region, or in the nation generally. The Director further indicated the Petitioner did not demonstrate that the specific work he proposed to undertake would offer original innovations to the food services field more broadly, as claimed. As such, the Director requested that the Petitioner submit additional evidence to establish the endeavor's potential prospective impact, such as documentation to substantiate how it would have national or global implications in the field, have significant potential to employ U.S. workers or have other substantial economic effects, broadly enhance societal welfare or cultural or artistic enrichment, or significantly impact a matter that a government entity has described as having national importance.

In response, the Petitioner pointed to his skills and experience, asserting his "strong innovation skills, entrepreneurial spirit, and experience as a lecturer," his work in gastronomy and events as a barista and chef, and his "23 years of extensive professional experience." The Petitioner stated that he would "benefit any U.S. companies and businesses that need qualified professionals who possess expertise in recruiting, training, and managing staff, maintaining a safe and legal work environment, setting strategic goals, managing finances, ensuring quality service, and continuously developing professional and technical knowledge to contribute to the team's success, which he plans to continue to infuse in the U.S." The Petitioner emphasized submitted industry reports and articles showing how business management, development, and sales professionals play a crucial role in businesses, "institutionalizing effective sales and management strategies that align well with market occurrences and fluctuating regulations." The Petitioner appeared to assert that he could provide these professional services to U.S. companies. In a provided business plan, the Petitioner stated that his proposed company would open a chain of franchised restaurants, developing local economies and impacting HUB Zones within which they would be opened.

As discussed, the Director concluded the Petitioner established that his proposed endeavor had substantial merit. However, the Director determined that the Petitioner did not demonstrate the national importance of his proposed endeavor. The Director stated that the Petitioner's assertions regarding the national impact of his proposed endeavor were not supported by independent objective evidence and lacked specificity to establish that it would have broader implications on a national or even global scale or have substantive positive economic impacts. For instance, the Director reasoned that the Petitioner did not provide evidence from potential customers, users, investors, or other independent sources to demonstrate the plausibility of his business plans.

On appeal, the Petitioner again stresses that the Petitioner is "an international business expert with more than twenty-three (23) years of experience within business development and administrative operations management roles," stressing that he would "advise U.S. companies on how to properly plan, direct and coordinate the operations of public and private sector organizations." The Petitioner asserts that its company would hire 15 employees in the first year and he would "plan, procure, direct, coordinate, and execute business operations to assist small and medium sized companies in the U.S. to grow." The Petitioner again points to submitted reports and articles discussing the importance of sales managers and business development professionals and asserts that he would "create value for U.S. organizations "through improved performance, achieved by providing objective advice regarding optimization of business processes using industry methodologies, as well as implementing effective business management and development, and sales and marketing techniques." The Petitioner states that capable immigrants such as the Petitioner are important to foreign direct investment (FDI) and U.S. job creation, noting that $60 billion in FDI is generated annually by foreign-owned firms.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.*

at 890. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

First, on appeal and throughout the record, the Petitioner regularly emphasizes his skills and experience in the food industry, as well as in business development and administrative operations management roles. The Petitioner also provided approximately seven support letters from colleagues, emphasizing his prior work on projects and his expertise. In contrast, none of these support letters discuss the potential prospective impact of the Petitioner's specifically proposed endeavor. In addition, the Petitioner provided an expert opinion from [redacted], from the [redacted] outlining the Petitioner's skills and experience and his "impressive record of business achievements in the food services industry in Brazil" and his "intimate knowledge of the Brazilian business and legal environment." But the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted generic and unsupported assertions regarding the potential prospective impact of his proposed endeavor. The Petitioner stated that his proposed endeavor would have "ripple effects generated upon significant commercial matters, the domestic job market, the national economy, and the overall business ecosystem." The Petitioner further asserted his proposed endeavor would "bring to the U.S. economy…improved productivity, spurring innovation, and creating jobs," as well as "enhance strategic, operational, marketing, and sales management capabilities" in the United States. However, the Petitioner did not sufficiently articulate and document these asserted "ripple effects," the "significant commercial matters" he would impact, or how he would improve productivity within the U.S. economy, spur innovation, or enhance marketing and sales management on a national level.

As discussed, the Petitioner also emphasized the impact that immigrant entrepreneurs have on the U.S. economy, asserting that they create an average of 1,200 jobs per new company, but it is not clear how the impact of all immigrant entrepreneurs on the U.S. economy specifically supports the potential prospective impact of his specific proposed endeavor. He also contended that his company would offer "unique products and services," "reduce dependence on obsolete systems and technologies, resulting in greater economic freedom," and "apply the latest technologies," but he did not specify or document the new products and services he would introduce, systems and technologies he would utilize, or technologies he would introduce to the food services industry. For example, the Petitioner discussed the use of artificial intelligence and machine learning several times on the record, however, he did not describe how this would be applicable to the food services industry or cause his proposed endeavor to have a prospective impact on a national level. In fact, the Petitioner appeared to provide differing assertions with respect to his proposed endeavor, in some cases appearing to indicate that he would open a chain of franchised health food restaurants, and elsewhere suggesting he would provide consulting services to small and medium size businesses on business development and administrative operations. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Likewise, the Petitioner emphasized submitted industry reports and articles showing how business management, development, and sales professionals play a crucial role in businesses, "institutionalizing

effective sales and management strategies that align well with market occurrences and fluctuating regulations." The Petitioner also indicated that he could provide these professional services to U.S. companies. Although we acknowledge that management, business development, and sales professionals may contribute to the economy generally, this evidence does little to substantiate the prospective national impact of the Petitioner's specifically proposed endeavor. The impact of all management, business development, and sales professionals aggregately, is not relevant to demonstrating his potential prospective national impact individually. On appeal, the Petitioner asserts that its company would hire 15 employees in the first year and he would "plan, procure, direct, coordinate, and execute business operations to assist small and medium sized companies in the U.S. to grow." However, the Petitioner provides little explanation as to how its hiring projections would have a national impact, particularly since it provides statistics indicating that his company would operate in several large industries, including the health and wellness food market he states accounts for approximately $18.4 billion in annual revenue and the franchising industry generating $670 billion in revenue in 2020.

The Petitioner also points to submitted reports and articles discussing the importance of sales managers and business development professionals and asserts that he would "create value for U.S. organizations through improved performance, achieved by providing objective advice regarding optimization of business processes using industry methodologies, as well as implementing effective business management and development, sales and marketing techniques." Again, the Petitioner does not detail or document the advice he would provide, business processes and methodologies he would work with, or business management and sales and marketing techniques he would implement, nor the specific clients to which he would provide these professional services. Similarly, the Petitioner states that immigrants such as the Petitioner are important to FDI and U.S. job creation, noting that $60 billion in FDI generated annually by foreign-owned firms. The Petitioner provides little explanation and documentation to substantiate that his specific endeavor, rather than immigrants generally, would generate substantial FDI as necessary to have a national impact. The Petitioner has not supported his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also asserts that the business would generate over $3 million in revenue and hire a total of 270 people during the first five years, and that the new company would open locations in Hub Zones, further benefiting U.S. economic development. Yet, the Petitioner does not sufficiently describe in detail the nature of the services his company would provide. For instance, the Petitioner submitted hiring projections reflecting that his proposed company would hire two financial analysts, five franchise analysts, five sales representatives, and three data analysts, employees whose roles are not clear given that the new company proposed to operate in the health food services industry. The Petitioner does not sufficiently explain and document how his business plans would have a national impact on this major U.S. industry. In sum, the Petitioner's business plan does not demonstrate that his proposed endeavor would, more likely than not, have significant potential to employ U.S. workers or generate other substantial positive economic effects. *Id.*

The Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed business would rise to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec.

at 893. As noted by the Director, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his proposed clientele, even if such clientele were sufficiently identified and documented. As such, the Petitioner has not demonstrated that his proposed endeavor would have a broad influence commensurate with national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive, we decline to reach and hereby reserve the Petitioner's arguments with respect to the second and third prong outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.